

Salem Planning and Zoning Commission  
September 21, 2010

Present: Amato, R.

Bingham, D

Buckley, K.

Burr, E.

Chinatti, M., Town Planner/ZEO

Fogarty, G., Alt.

McKenney, H.

Savalle, R.

Smith, V., Alt.

Walter, G.

Absent: Vacancy, Alt.

**CALL TO ORDER:**

H. McKenney, chair:

- Called the meeting to order at 7:07 pm, and
- Introduced all members and staff present.

**ADDITIONS TO THE AGENDA:**

There were no *ADDITIONS TO THE AGENDA* this evening.

**PUBLIC HEARING(S):**

None Scheduled

**PETITIONERS:**

There were no *PETITIONERS*.

**PUBLIC COMMENTS:**

There were no *PUBLIC COMMENTS*.

**OLD BUSINESS:**

- WITHDRAWN**
- 1) Daigle (Daigle & Associates) Resubdivision Application (RS#10-08-01) got a **three (3) lot resubdivision of land at 212/216 Norwich Road**

This application was withdrawn by the applicant on 9/07/10, stating that an application for a Special Exception would be submitted for the 9/28/10 PZC Regular Meeting.

2) **R. & W. Heating - Site Plan Modification application (SPM#10-08-02) for the addition of office space to the existing four (4) bay garage at 10 Witter Road**

M. Chinatti, Town Planner/ZEO:

This application is for an office addition to the commercial building on the corner of Old Colchester and Witter Roads. It is on the easterly side of Old Colchester Road (Route 354) and the north side of Witter Road.

The Inland Wetlands and Conservation Commission granted a Declaratory Ruling of no Jurisdiction for this project, as there will be no disturbance to wetlands or Upland Review Areas.

Comments from the Sanitarian concerning his review of the plans have not yet been received.

Waiver requests have been submitted for sections of Section 11A.4 and for permission to submit a fee in lieu of the submission of digital data.

A letter (8/02/10) from the DOT stating they have no concerns and an encroachment permit is not required has also been received.

R. Hatch, applicant, appeared:

Discussion with the Commission concerning the following waiver requests from sections of Section *11A SITE PLANS*:

Section	4.1 - the title block must be shown on the plan.
Sections	4.2 through 4.4
Section	4.6 - this is on the plan.
Section	4.7
Sections	4.9 through 4.14, and
Section	4.16

M/S/C (McKenney/Bingham) to approve the waiver requests for Sections 11A.4.1 through 11A.4.4, 11A.4.6, 11A.4.7, 11A.4.9 through 11A.4.14, and 11A.4.16 for the R & W Heating Site Plan Modification application (SPM#10-08-02) for the addition of office space to the four (4) bay garage at 10 Witter Road. Vote: approved unanimously.

M/S/C (McKenney/Buckley) to approve the submission of a fee (\$250) in lieu of digital data submission for the R & W Heating Site Plan Modification application (SPM#10-08-02) for the addition of office space to the four (4) bay garage at 10 Witter Road. Vote: approved unanimously.

The only information the PZC is awaiting is the Sanitarian's comments.

M/S/C (McKenney/Burr) to table the R & W Heating Site Plan Modification application (SPM#10-08-02) for the addition of office space to the four (4) bay garage at 10 Witter Road to the 9/28/10 Salem Planning and Zoning Commission Regular Meeting for possible action. Vote: approved unanimously.

#### **NEW BUSINESS:**

- 1) **Change public hearing dates for proposed amendment scheduled for 9/28/10 and proposed amendments scheduled for 10/19/10 to October 26, 2010, 7:00 pm**

M/S/C (Bingham/Buckley) to change the public hearing dates for the proposed amendment currently scheduled for 9/28/10 and the proposed amendments currently scheduled for 10/19/10 to October 26, 2010, 7:00 pm at the Salem Town Office Building, 270 Hartford Road. Vote: approved unanimously.

#### **2) Kobyluck - Permit status**

D. Bingham recused himself and left the meeting at 7:45pm.

M. Chinatti, Town Planner/ZEO:

The PZC approved the renewal of the Kobyluck Excavation Permit on 6/15/10 with a number of conditions, two (2) of which were:

- A revised site plan be submitted within sixty (60) days (8/19/10) of the approval date, and
- A revised bond, the amount substantially higher than the bond currently on file, must be submitted.

Neither condition has been satisfied as of today's date (9/21/10).

Contacted Atty. S. Byrne concerning:

Does the suit filed by the Kobylucks in appeal of the Commission's conditions of approval in any way stay the conditions of the approval of the renewal?

Atty. Byrne stated that the court case does not stay the conditions.

Since all conditions must be met before work can resume at the site, and since the two conditions, as stated above, have not been met, if any activity takes place at the site, the Commission has the following options:

- Have the ZEO issue a Cease & Desist Order, which can be appealed to the Zoning Board of Appeals by the violator, or
- Immediately file an injunction with the court.

Read a draft of a letter she had prepared to send to the Kobylucks stating that a Notice of Special Exception Expiration will be placed on the Salem Land Records.

Commission discussion in regard to referencing the fact that the revised bond amount has not been submitted in the letter.

It was the Commission's consensus to move forward and:

Send (Certified, Return Receipt) the letter tomorrow (9/22/10) and reference the non-submittal of the bond.

If any activity is observed at the site, the Commission would be able to handle the situation at that time.

Based upon their past history, the Commission will go straight to filing an injection with the court.

#### **ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT:**

ZEO/WEO Reports were sent to all members in their packages for this meeting.

M. Chinatti, Town Planner/ZEO/WEO, added:

The Niantic River Watershed Advisory Committee will be presenting a workshop on Low Impact Development (LID) on 9/29/10 at the Waterford Town Hall at 7:00 pm. Prior to the workshop, at 6:30 pm, there will be a tour of the Oswegatchie School in Waterford which is incorporating a number of LID practices.

All surrounding towns' Land Use Commissions have been invited.

#### **APPROVAL OF MINUTES OF PREVIOUS MEETING(S):**

- 1) **August 17, 2010 - Regular Meeting**
- 2) **August 24, 2010 - Regular Meeting**

M/S/C (Savalle/Buckley) to approve the minutes of the August 17, 2010 and the August 24, 2010 Regular Meetings of the Salem Planning and Zoning Commission amended as follows:

##### August 17, 2010

Page 4: in the middle of the page, in the *Vote*: for the approval of the *June 7, 2010* PZC Special Meeting minutes, delete the third line beginning with ~~VOTE FAILED due to~~ and replace with: "The Commission felt that due to the lack of a majority of Commission members voting for approval, they took the following action:"

##### August 24, 2010

Page 5: at the top of the page, in the first paragraph, in the second line, change *..... be consistent on all applications* ..... to "*..... be consistent on all excavation applications* .....".

Vote: approved unanimously.

**PLUS DELTAS:**

Commission review of the positive aspects and areas for improvement in regard to the conduct of tonight's meeting.

**CORRESPONDENCE:**

There was no *CORRESPONDENCE*.

**EXECUTIVE SESSION:**

- **Pending Litigation - Kobyluck Brothers, LLC v Salem Planning and Zoning Commission**

M/S/C (McKenney/Buckley) to go into Executive Session at 8:08 pm to discuss Kobyluck Brothers, LL v Salem Planning and Zoning Commission. Vote: approved unanimously.

Present at Executive Session:

R. Amato, K. Buckley, E. Burr, G. Fogarty, H. McKenney, R. Savalle, V. Smith, and G. Walter.

Present at the Commission's pleasure:

M. Chinatti, Town Planner/ZEO/WEO, and D. McTigue, PZC Administrative Assistant/Recording Secretary.

NO ACTION TAKEN.

M/S/C (Buckley/Burr) to come out of Executive Session at 8:24pm. Vote: approved unanimously

**ADJOURNMENT:**

M/S/C (Amato/Burr) to adjourn the meeting at 8:24 pm. Vote: approved unanimously.

Doris McTigue, Administrative Assistant/Recording Secretary